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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

GLORIA L. DODD,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA VETERINARY
MEDICAL BOARD,

Defendant and Respondent.

A124052

(Sonoma County Super Ct.
No. SVC 242066)

Gloria L. Dodd is a doctor of veterinary medicine who has practiced in California since March 1960. Her current office is in Sea Ranch, Sonoma County. She is “well-known in the field of homeopathic veterinary medicine.” Dodd employs “a range of alternative modalities characterized as ‘energy medicine,’ ” including homeopathy, acupressure, color therapy, diet, dowsing, nutrition, dietary supplements, vitamins, minerals, and radionics. The last of these—radionics—involves diagnosis and healing through “extra-sensory faculties” in which Dodd “ ‘broadcast[s]’ healing energy” to animals not present in her office. Typically, Dodd does not examine or treat animal patients in her office. Rather, she has the client—the patient’s owner—complete a detailed questionnaire about the patient, reviews the patient’s recent medical records, and examines photographs of the patient. She typically requires that an animal patient who is not present have an “attending local veterinarian.”

In August 2007, at the conclusion of a disciplinary proceeding initiated by the Veterinary Medical Board (Board), an administrative law judge (ALJ) revoked

Gloria L. Dodd's veterinary license, then immediately stayed the revocation for a period of five years, during which Dodd was permitted to continue practicing under probationary terms. Among other things, these terms required that she "obey all federal and state laws and regulations substantially related to the practice of veterinary medicine, including Business and Professions Code section 4853 (registration of place of practice) and California Code of Regulations, title 16, section 2032.1 (veterinarian-client-patient relationship)."

In her appeal, Dodd contends the ALJ erred in imposing these probationary terms. She urges that she should not be required to comply with the "in person" examination requirement of California Code of Regulations, title 16, section 2032.1 (regulation section 2032.1) because the Board failed to prove that her use of alternate methods to conduct examinations was not in accord with the state's "veterinary standards of practice." In the same vein, she urges that she should not be required to maintain a premises permit under Business and Professions Code section 4853 (statutory section 4853) when "she sees no animals there." As discussed below, we conclude the trial court did not err in its partial grant and partial denial of Dodd's petition for administrative mandate, and we affirm the judgment.

BACKGROUND

In March 2006, the Board filed an accusation against Dodd seeking the revocation or suspension of her veterinary license, which she had obtained 46 years earlier. (See Bus. & Prof. Code, § 4875; Gov. Code, § 11503.) The factual allegations were that Dodd maintained a Web site in which she operated a business called "Everglo-Natural Veterinary Services, Inc" <<http://www.holisticvetpetcare.net>> [as of Dec. 8, 2009], and through which she offered certain homeopathic remedies, as well as an "Extensive 6 Hour Reading" of an animal patient's photographs and records. She was subject of an investigation by the federal Food and Drug Administration (FDA) in which an agent purchased veterinary products from Dodd in July 2004 and had them analyzed. Finally, the accusation alleged Dodd had treated a dog "Phido" for some three years beginning in June 2003, although she never personally examined the dog, since its owner "G.E."

resided in Florida. The accusation detailed the “holistic veterinary services” that Dodd agreed to provide in a “Veterinary Consultation” agreement, such as “Kirlian photography,” the use of a “Dermatron” machine, “Electro acupuncture According to Voll,” and the use of homeopathic nosodes. G.E. allegedly purchased a number of products recommended by Dodd.

The accusation’s three “cause[s] for discipline” were characterized as “Sales of Products via Internet,” “Treatment of ‘Phido,’ ” and “Violation of Local Rabies Ordinance.” These charged Dodd with false or misleading advertising, violation of federal drug laws, violation of a local rabies ordinance, and fraud, deception, negligence and/or incompetence in the practice of veterinary medicine. (See Bus. & Prof. Code, § 4883, subs. (f), (g)(3) & (i).) They also alleged she had dispensed dangerous drugs or devices without a license. (Health & Saf. Code, § 11352.1.) Additionally, they stated Dodd had, in treating “Phido,” violated two state regulations. (See Bus. & Prof. Code, § 4883, subd. (o).) The first regulation requires veterinarians to act “in a manner consistent with current veterinary medical practice in this state.” (Cal. Code Regs., tit. 16, § 2032 (regulation section 2032).) The other—regulation section 2032.1—requires establishment of the veterinarian-client-patient relationship. Finally, Dodd was charged with failure to obtain a premises permit as required by statutory section 4853.

The ALJ conducted a hearing in November and December 2006. (See Gov. Code, § 11512.) In February 2007, he submitted a proposed decision for adoption by the Board. (See Gov. Code, § 11517, subs. (a) & (c).) In May 2007, however, the Board remanded the matter to the ALJ to take additional evidence and argument in order to address certain specified issues. In August 2007, the ALJ submitted a revised proposed opinion following remand. On November 2, 2007, the Board adopted the revised proposed opinion without change. (See Gov. Code, § 11517, subd. (c)(2)(A).)

In the revised proposed opinion adopted as the Board’s decision, the ALJ noted the Board had the burden of proving cause for discipline under the clear and convincing standard of proof. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) With respect to the cause for discipline entitled “Violation of

Local Rabies Ordinances,” the ALJ concluded the Board had not met its burden of proof. Similarly, regarding the cause for discipline relating to “Sales of Products via Internet,” the ALJ concluded that the Board had failed to show that Dodd had engaged in false or misleading advertising, or that she had committed fraud, deception, negligence and/or incompetence. The ALJ concluded that the alleged violation of Health and Safety Code section 11352.1 did not show a cause for discipline, because the Board had no authority to impose professional discipline based on the alleged violation of a criminal statute. On the other hand, the ALJ concluded that the Board *had* shown cause for discipline for violation of a federal drug law (Bus. & Prof. Code, § 4883, subd. (g)(3)), in that Dodd herself had acknowledged such a violation in connection with federal regulations requiring licenses for the preparation and production of “biological products.” The ALJ noted, however, that Dodd was now in compliance with federal requirements.

As for the cause for discipline concerning “Treatment of ‘Phido,’ ” the ALJ concluded the Board *had* shown a cause for discipline for unprofessional conduct. (Bus. & Prof. Code, § 4883, subd. (g).) Again, this was based not so much on the evidence presented by the Board as on Dodd’s acknowledgment that she was subject to discipline on this ground after dispensing lactated ringers and hypodermic needles to G.E. Otherwise, the ALJ concluded the Board had *not* proved any false or misleading advertising, any violation of federal drug laws, or any fraud, deception, negligence and/or incompetence in connection with her treatment of Phido. Further, the Board had failed to prove that Dodd, in her treatment of Phido, had violated either regulation section 2032.1 or regulation section 2032.

The ALJ went on to note, however, that while the Board had not shown a violation of regulation section 2032.1 in connection with Dodd’s treatment of Phido, there was evidence indicating that she “typically [did] not physically examine the animals she treats.” The Board had argued that regulation section 2032.1 requires a physical examination, while Dodd had argued it did not. The ALJ noted that “it may be possible to comply with the regulation in other ways” than a physical examination, such as “remote video, telemetry, [or] other technology” or by acting as a “consulting

veterinarian.” Still, he deemed the Board’s interpretation was “reasonable,” and noted that Dodd had “acknowledged at [the] hearing that she will conduct physical examinations of animals in her office if ordered to do so.” The ALJ determined, in any event, that Dodd would be required to abide by all laws and regulations of the Board, including regulation section 2032.1.

The ALJ concluded, finally, that statutory section 4853—requiring a premises permit—did not itself provide a basis for discipline, and the Board had failed to plead violation of a veterinary statute as a ground for discipline. (See Bus. & Prof. Code, § 4883, subd. (c).) Again, however, the ALJ noted that Dodd “[a]t hearing [had] expressed her willingness to obtain a premise permit,” and would be required to comply with applicable statutes and regulations of the Board, including statutory section 4853.

With regard to the imposition of discipline, the ALJ pointed out that the Board had, for the most part, failed to prove its accusation. He detailed other circumstances mitigating against the license revocation sought by the Board, including evidence that she had changed or ceased the conduct found to be a cause for discipline, the lack of evidence she had ever actually harmed an animal, the lack of any prior disciplinary action in over 45 years of practice, and “scores of testimonials” from clients and fellow veterinarians attesting to Dodd’s integrity and the quality of her care. Accordingly, the ALJ revoked Dodd’s license, but stayed the revocation subject to five years’ probation, during which period Dodd would be required, among other things, to “obey all federal and state laws and regulations substantially related to the practice of veterinary medicine,” including, as we have previously noted, the premises permit requirement of statutory section 4853 and the veterinarian-client-patient relationship required under regulation section 2032.1.

On December 6, 2007, the Board denied a request by Dodd for reconsideration. Later that month, Dodd sought judicial review by petition for writ of administrative mandate, urging that the ALJ’s decision had made it clear that she should be allowed to continue her practice. But she claimed it would be “impossible” for her to continue her practice if she were required to comply with regulation section 2032.1 and statutory section 4853, and argued that the imposition of these probationary terms was accordingly

an abuse of discretion. The trial court, in an order filed November 14, 2008, granted the writ “insofar as it prohibits Dr. Dodd from acting as a consultant to other veterinarians who treat patients that are the subject of the consultation.” It denied the writ in “all other respects.” This appeal followed. (Code Civ. Proc., § 904.1, subd. (a)(1).)

DISCUSSION

A. Standard of Review

In reviewing an administrative decision involving a professional license, the trial court’s duty was to examine the administrative record for errors of law and reweigh the evidence in a limited trial de novo to determine whether a preponderance of the evidence supported the administrative decision. (*James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1105.) We review the record, in turn, to determine whether the trial court’s findings are supported by substantial evidence. (*Id.* at p. 1106.)

B. Probationary Compliance With Provisions Governing Veterinary Practice

Under statutory section 4853 “[a]ll premises where veterinary medicine . . . is being practiced [must] be registered with the board.” (Bus. & Prof. Code, § 4853, subd. (a).) A veterinarian licensed by the Board typically obtains a premises permit or certificate pursuant to this section for the facility that comprises his or her principal place of business. (See Bus. & Prof. Code, § 4853, subd. (b).)

Pursuant to regulation section 2032.1, it is “unprofessional conduct for a veterinarian to administer or prescribe a drug, medicine, appliance, or application or treatment . . . without having first established a veterinarian-client-patient relationship with the animal patient . . . and the client.” (Cal. Code Regs., tit. 16, § 2032.1, subd. (a).) Such a relationship exists “when all the following occur: [¶] (1) The veterinarian has assumed responsibility for making medical judgments regarding the health of the animal(s) and the need for medical treatment, has discussed with the client a course of treatment and if applicable has instructed the client as to the appropriate directions for administering the drugs or treatments. [¶] (2) The veterinarian has sufficient knowledge of the animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian has recently seen and is

personally acquainted with the care of the animal(s) by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animals are kept[.]” (Cal. Code Regs., tit. 16, § 2032.1, subd. (b).)

The probationary terms set by the ALJ and adopted by the Board, as noted above, called for Dodd to “obey all federal and state laws and regulations substantially related to the practice of veterinary medicine,” including statutory section 4853 and regulation section 2032.1. In denying Dodd’s petition for administrative mandate, the trial court effectively upheld the probationary requirements imposed by the Board, *except* to the extent they might be construed to “prohibit[her] from acting as a consultant to other veterinarians who treat patients that are the subject of the consultation.”

Dodd contends the trial court erred in doing so. As we have noted, it was undisputed that Dodd did not have a premises permit as required by statutory section 4853, yet the ALJ determined that that section did not itself provide a basis for discipline, and the Board’s accusation did not specify section 4883, subdivision (c)—the violation of a veterinary statute—as a ground for discipline. Similarly, the ALJ determined there was no basis for discipline due to a violation of regulation section 2032.1, because the Board’s accusation pleaded Dodd had violated this section with respect to her treatment of Phido, yet the Board failed to prove this particular allegation. Dodd also points to the ALJ’s conclusions relating to her alleged violation of regulation section 2032, that the Board had failed to establish “current veterinary practice” in California and, hence, had failed to prove that Dodd’s treatment of Phido was not consistent with such practice. It is Dodd’s position, essentially, that the trial court abused its discretion in upholding the probationary term requiring compliance with statutory section 4853 and regulation section 2032.1, because this term is not supported by, but is rather contradicted by, the foregoing ALJ determinations. She asserts, as she did below, that the ALJ was “mistaken” in his “notion” that she had agreed to obtain a premises permit and to conduct physical examinations of animal patients in her office.

Initially, we note that it does not appear on the face of the record that the ALJ erred in stating that Dodd had agreed to obtain a premises permit and conduct physical

examinations in her office. In such a case, we make all intendments in support of the challenged decision. (See *Dumas v. Stark* (1961) 56 Cal.2d 673, 674; Cal. Rules of Court, rule 8.163.)

We also note that the foregoing ALJ determinations are not factual “findings,” as Dodd suggests, but rather conclusions of law to the effect that the Board had not met its burden of proof with respect to particular allegations.¹ Thus, the gist of Dodd’s argument—that the ALJ’s order of probation is not supported by the findings of fact—is not persuasive.

Moreover, Dodd’s argument misses the point of the challenged probationary terms. These terms require simply that Dodd obey statutes and regulations governing veterinary medical practice, including statutory section 4853 and regulation section 2032.1. All licensed veterinarians are subject to discipline for violating *any* statute or regulation governing their practice. (See Bus. & Prof. Code, § 4883, subds. (c) & (o).) Dodd does not dispute the instances in which the ALJ concluded there *was* cause to discipline her, and she agreed below that probation was an appropriate sanction in her case. In our view, it was not unreasonable for the Board to require, as a term of administrative probation, that she not engage in conduct that would subject her to further discipline. If the Board failed to meet its burden to prove by clear and convincing evidence that Dodd was subject to discipline for specific, alleged violations of statutory section 4853 and regulation section 2032.1, it does not follow that she should therefore be exempt from future compliance with these sections.

We conclude the trial court did not err to the extent that its partial denial of Dodd’s petition requires that she comply with statutes and regulations governing veterinary medical practice, including statutory section 4853 and regulation section 2032.1.

¹ Nor did the trial court make a factual finding when it observed the Board had not prevailed on its accusation that Dodd was subject to discipline for violating regulation section 2032.1. Dodd’s petition did not call for the trial court to reweigh the issue whether the Board had prevailed on this issue, but rather asked that it determine that the challenged probationary terms were not supported by the ALJ’s findings.

C. Consumer Access to “Alternative Forms of Veterinary Medicine”

Dodd points to findings of fact made by the ALJ, to the effect that Dodd had submitted numerous client testimonials, which the Board had not rebutted. Many of these asked that she be allowed to continue her practice and attested to her “knowledge of orthodox and holistic veterinary medicine, the high quality of her care, her work with local veterinarians, and the efficacy of her treatment.” Dodd suggests that these findings do not support the challenged probationary terms, because the terms “improperly den[y] the public access to her services.”

Amici curiae, consisting of 36 of Dodd’s clients and 18 veterinary colleagues, have submitted a brief in which they similarly urge that the challenged probationary terms harm rather than protect consumers because the terms “den[y them] an opportunity to choose and associate with alternative forms of veterinary medicine.” The amici curiae also claim the Board’s interpretation of regulation section 2032.1, so as to require a physical examination of an animal patient in order to establish a veterinarian-client-patient relationship, “is calculated solely to attack [Dodd’s] form of alternative veterinary medicine without any substantive justification.”

On this point, we note simply that the ALJ decision adopted by the Board does not, on its face, interpret regulation section 2032.1 to require a physical examination of an animal patient in all cases, in order to establish a veterinarian-client-patient relationship. The ALJ concluded, in effect, that the Board’s interpretation was “reasonable” as a general rule, but noted additionally that “it *may be possible* to comply with the regulation in other ways (for example by remote video, telemetry, other technology, *or as a consulting veterinarian*)” (Italics added.) Further, the trial court *granted* Dodd’s petition insofar as the ALJ probationary order adopted by the Board may be construed to “prohibit[Dodd] from acting as a consultant to other veterinarians who treat patients that are the subject of the consultation.” As Dodd concedes, her “alternative” practice typically involves “precisely the arrangement” in which she works in consultation with a local veterinarian. Given the actual language of the Board’s order,

and the modifying effect of the trial court’s decision, we fail to see how the challenged probationary terms improperly deny consumer access to Dodd’s “alternative” services.

DISPOSITION

The judgment is affirmed.

Marchiano, P.J.

We concur:

Dondero, J.

Banke, J.